IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY
and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO : 364 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 06/02/2002 in W.P No. 2173 OF 2002 on the file of the High Court.)

Between:

Mohd.Jahangir Pasha, S/o Late Mohd. Shrfuddin, Flat No.110, C-Block, Kubera Tower, Trimulgherry, Secunderabad.

..... APPELLANT

AND

1 Secunderabad Cantonment Board, rep. by its Executive Officer, Secunderabad.
2 Sri. N.S. Rajan S/o Late A.V.Natarajan, r/o T18, 6th Avenue, Basant Nagar, Chennai. rep by his GPA Holder Sri Sudershan Reddy s/o Late B. Narasimha Reddy, r/o 3-13-425, Trimulgherry Village, Secunderabad.

.....RESPONDENTS

Counsel for the Appellant: Mr. P.VENUGOPAL

Counsel for the Respondent No.1: Mr. DEEPAK BHATTACHARJEE

Counsel for the Respondent No.2: None

The Court made the following Judgment: (per Sri BRSR,J)

The unsuccessful petitioner in W.P No. 2173 of 2002 is the appellant in this appeal preferred against the order dated 6.2.2002 passed by a learned single Judge of this Court directing the appellant herein to approach the civil Court and obtain necessary orders.

Sri P. Venugopal, learned counsel for the appellant submitted that

the learned Judge committed an error in treating the dispute raised by the appellant as against the 1st respondent herein for subdividing the appellant's plot No. 78/A into 78/A/1 and 78/A/2 vide resolution No. 10 dated 2.11.1998 as if it is a dispute between the appellant and the 2nd respondent. It is contended that the learned Judge ought to have adverted to the question raised in the writ petition as to whether proper procedure has been followed by the 1st respondent-Cantonment Board for sub-dividing the land belonging to the petitioner at the instance of the 2nd respondent.

There appears to be a serious dispute between the petitioner and the 2nd respondent with regard to the same subject matter. In the counter affidavit filed by the respondent-Board, it is explained that the application for sub-division of plot No. 78/A into plot Nos. 100/2 and 78/A in Sy.No. 61 and 62 of Trimulgherry Village was submitted by the 2nd respondent through his General Power of Attorney Holder on 24.10.1998. The 2nd respondent in support of his claim filed a registered sale document bearing No. 279/1983 and also the registered sale deed dated 4.7.1959. Having considered the request of the 2nd respondent appropriate resolution was passed after following the requisite procedure and thereafter, the 2nd respondent submitted an application for sanction of plan of building proposed to be constructed on the sub-divided plot No. 100/2.

That a report was received from the concerned Supervisor on 14.12.2001 stating that the 2nd respondent was constructing building by making deviations and in an unauthorized manner. This has resulted in the Board unanimously passing resolution on 19.12.2001 deciding to initiate appropriate action against the 2nd respondent under the provisions of the Cantonments Act, 1924 (for short 'the Act'). This was followed by notice dated 5.1.2002. That since in spite of the notice issued under Section 185 of the Act the 2nd respondent did not stop the construction,

official notice under Section 256 of the Act was issued on 4.7.002 directing the 2nd respondent to remove all constructions made therein. In the counter affidavit it is not stated as to what further steps were taken after the notice issued under Section 256 of the Act. The 1st respondent is duty bound to proceed further in the matter and implement its own notice and give effect to it unless there are any legal impediments for doing so.

In the circumstances, the order passed by the learned single Judge is modified directing the 1st respondent herein to proceed further pursuant to its notice dated 4.7.2002 issued under Section 256 of the Act.

So far as the question of sub-division of the land is concerned, it essentially involves disputed questions of fact. It is not as if the petitioner is left without any remedy. The decision of the 2nd respondent or the 1st respondent can always be questioned in the suit already filed by the petitioner herein against the 2nd respondent since the 2nd respondent is the beneficiary of such sub-division ordered by the 1st respondent Cantonment-Board. However, it is required to observe that such sub-division *per se* itself may not confer any right, title and interest upon the 2nd respondent, if he otherwise does not have any title in the property.

In the circumstances, leave is granted to the petitioner to get the issue raised in the writ petition adjudicated in the competent civil Court where the suit is stated to be pending between the petitioner and the 2nd respondent. That if any such dispute is raised, the same shall be gone into by the Court and the decision thereon shall be rendered in accordance with law uninfluenced by the observations if any made in the order.

The Writ Appeal is accordingly disposed of modifying the order passed by the learned single Judge to the extent indicated above. No order as to costs.

(B. Sudershan Reddy)

23..06..2004

(Ghulam Mohammed, J)

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One fair copy to the Hon'ble Sri Justice B. Sudershan Reddy
(for his lordship's kind perusal).

To

1 Executive Officer, Secunderabad Cantonment Board, Secunderabad.

2 2 CD copies.